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SUMMARY RECORD OF THE 1604th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 24 July 1997, at 3 p.m.

Chairman: Mrs. CHANET

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GE.97-17558 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of India (CCPR/C/76/Add.6 and CCPR/C/59/Q/IND/3) (continued)

1. Mrs. MEDINA QUIROGA said she wished to associate herself with the questions raised by Mr. Kretzmer. She welcomed the Indian Government's intention to ratify the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment, following a recommendation made in 1994, and she was pleased by the progress reported with regard to the advancement of women. However, it seemed to her that many issues had been considered for too long and with little to show in the way of results.

2. She focused on the implementation of article 3 of the Covenant (the equal right of men and women to the enjoyment of all civil and political rights) and noted that the principle of equality was enshrined in the Indian Constitution. She thought that the problem was the result either of a lack of legislation to implement the principles set forth in the Constitution, or a failure to implement those laws when they existed, or the courts' interpretation of the constitutional provision in question. For example, it was clear that, according to Indian jurisprudence, the articles of the Penal Code which concerned adultery had been considered valid because they protected women's modesty, while the provisions of section 488 (renumbered 135) of the Code of Criminal Procedure had been ruled valid because they required husbands to support their wives, though not the reverse. Those provisions portrayed women, as defenceless creatures, whose modesty had to be protected, unlike men, which seemed odd from the point of view of the Constitution (arts. 14 and 15).

3. It was true that the Constitution stated that not every differentiation constituted discrimination and there was abundant jurisprudence to demonstrate that distinctions had to be reasonable and objective. However, according to the 1986 Immoral Traffic Prevention Amendment Act, women caught in the act of prostitution had to prove that they were not prostitutes, and that distinction in treatment had been considered reasonable, despite the fact that it denied the benefit of presumption of innocence to one category of persons.

4. Turning to the question of the personal laws, she noted that according to paragraph 34 of the report (CCPR/C/76/Add.6), article 13 of the Constitution provided that any law became void if it was inconsistent with the rights enshrined in the Constitution. She wondered whether that principle was always implemented in practice, since paragraph 45 stated that the courts had "urged the Government to enact a uniform civil code so that the inequalities suffered by certain women under the personal laws are removed". The legislation in question concerned marital property; upon a man's death, his widow had a right to a portion of his property but had no claim to the remainder. A husband's responsibility to support his wife could be terminated if she disobeyed him or refused to have sexual relations with him (Muslim law) or if she was unchaste or failed to observe the tenets of the Hindu religion (Hindu law).

5. She asked why the personal laws were still in force if they discriminated against women and why they did not fall under article 13 of the Constitution. She also wondered why the Indian Government did not accede to the demands of Christians who were calling for changes in the personal laws governing their community. The explanation given by the delegation, which she could not accept, was that that would lead to a conflict between two sets of rights. In her opinion freedom of religion and the rights of minorities could not be used as a justification for restricting individual rights.

6. The report made no mention of the problem created by the traffic in women and girls and by prostitution, as if the authorities were unaware of it. Furthermore, the National Human Rights Commission had mentioned in its annual report that two Indian States had claimed that no cases of child prostitution had been reported. She asked the Indian delegation to explain whether the Immoral Traffic Prevention Act had been successfully invoked against traffickers, particularly those who dealt in the prostitution of women. Since prostitutes were targeted and punished under that Act, she wondered whether such cases had been included in the statistics submitted by the Indian delegation and whether the courts took attenuating circumstances into account in dealing with those women, who were usually forced into prostitution. Lastly, she asked whether India planned to decriminalize prostitution, at least for women.

7. With regard to rape, she wanted to know why a husband who was separated from his wife would be subject to only one third of the penalty imposed on any other rapist. Did that mean that his former wife still in some sense belonged to him? In view of practices such as dowry-related debt, the immolation of widows (sati) and the prostitution of children for religious reasons, it was to be wondered whether the structure of Indian society did not constitute a real incitement to crime. In view of the way women were treated, it was hardly surprising that they were raped while in police custody or taken hostage by people looking for the men who used them, that infanticide was practised against girls and even that female fetuses were aborted. In her opinion, the only way to end that situation would be to change the actual structure of society, since any genuine improvement depended on considering human rights as a whole. In her opinion, the main effort should focus on education. Although the enrolment rate among girls had increased, so had the drop-out rate, a fact which the report did not mention.

8. Lord COLVILLE said he had noted that the Indian delegation had acknowledged that the country's enormous problems were far from solved and had shown its willingness to help the Committee gain an idea of the real situation in India. That was particularly important since the report concentrated on the laws and institutions, which were excellent, but said little about the actual situation.

9. Like Mrs. Medina Quiroga, he had noted that the Governments of two major Indian States had denied that child prostitution existed, even though the National Human Rights Commission had specifically commented on that practice. He also wanted to mention the case of two commissions of judicial inquiry which had been established in the State of Manipur in order to investigate atrocities and murders committed by the security forces. As far as he knew, those commissions had not yet produced results. However, the Attorney-General

had personally come before the Committee to inform it that his Government would not tolerate any violation of the right to life by the security forces and had spoken of the political and economic measures taken by the Indian authorities in an attempt to put an end to years of conflict. Personally, he thought that the Government could solve the problem of abuse of authority by the security forces only by establishing the proper rule of law.

10. The fact that, as early as 1991 and 1992, commissions of inquiry had been established to no avail in the States of Andhra Pradesh and Rajasthan, where violent unrest had resulted in numerous deaths, made it all the more important to ensure the primacy of law. In those cases, the victims had been untouchables rebelling against the very difficulties and problems of which the Indian delegation had spoken. It was understandable that those people had no confidence in the protection supposedly provided for them by an agency such as the National Commission for Scheduled Castes and Tribes, since over 11,000 cases of atrocities committed against untouchables had been reported in 1992 and as many as 62,000 in 1994. That enormous increase was perhaps a sign of a growing awareness of available remedies, particularly that offered by the National Human Rights Commission. However, the statistics published in the report of that Commission showed that only a very small percentage of the cases submitted to it had actually been investigated and resolved. That might be due to the fact that the Commission had only recently been established but, in any case, the Indian delegation should provide further information regarding the remedies available to the National Human Rights Commission and regarding ways in which the Government might give the public confidence in that mechanism. Lastly, he asked why the 1952 Commissions of Inquiry Act had been amended in 1986, authorizing the Government not to submit the conclusions of those commissions to Parliament. The transparency claimed by the Indian authorities implied an effort to establish the truth.

11. Mr. KLEIN said that consideration of India's periodic report was particularly difficult because of the country's size, its large population (nearly 900 million people), the poverty in which many of those people were living and their underdevelopment, not only from the economic point of view but also with regard to education. Despite the Government's efforts, Indian society was not sufficiently aware of the need to create a climate favourable to human rights. While all those factors clearly affected the situation with regard to human rights they did not excuse the violation of those rights.

12. He shared the concerns raised by other members of the Committee and wished to focus on two issues. The first was the State's responsibility to provide protection, which it was not fulfilling entirely. For example, the report covered articles 16 and 26 of the Covenant in a single paragraph (para. 96), in just a few lines, whereas it was common knowledge that the caste problem, of which, moreover, the delegation had spoken, was one of the most disturbing aspects of Indian society and the primary cause of discrimination and exploitation in India. The report merely cited article 15 of the Constitution, which prohibited discrimination on the grounds of religion, race, gender, caste or place of birth. However, it was not enough for a State's legislation to conform to the Covenant; that legislation should not remain a dead letter, and it was the State's duty to ensure that the rights set forth in the Covenant were respected. There was no reason for the State to transfer that obligation to particular sectors of society. India had

not yet demonstrated that it had adequately fulfilled its duty to provide protection against violation of the rights set forth in the Covenant within the very structure of Indian society.

13. Another example was child labour, which was dealt with in paragraphs 119 to 122 of the report. In that regard, he wished to associate himself with the questions raised by Mr. Ando. According to the non-governmental organization (NGO), Human Rights Watch, there were no less than 115 million working children in India out of a total population of 900 million. Working children were robbed of their childhood and youth, which was unacceptable. It was true that the Indian delegation had spoken of economic necessity, but that was not enough. He asked what concrete measures had been taken to combat that phenomenon and wondered how such ghastly practices as the deliberate blinding of children could ever be accounted for.

14. He was also concerned at the behaviour of State officials, in other words, those for whose behaviour the State was directly responsible. The Committee had received alarming information. According to Amnesty International, torture was routinely practised in all 25 States of India; that organization had mentioned the names of over 400 individuals who had died while in custody at police stations, in their cells or in hospitals to which they had been taken after being ill-treated. That information concerned the period covered by India's third periodic report and revealed a situation which could not be explained by economic problems alone.

15. Consideration of the whole body of legislation governing the police and armed forces showed that it could only lead to abuses by members of the police and armed forces and create a climate in which instinctive behaviour became uncontrollable; the result was brutality and violence, including rape, with the intention of inflicting humiliation, particularly on women. That legislation, which was mentioned in paragraph 51 of the report, included the Armed Forces (Special Powers) Act, the National Security (Amendment) Act, the Terrorist and Disruptive Practices (Prevention) Act (TADA) and the act governing public safety in Jammu and Kashmir.

16. For example, under the National Security (Amendment) Act, a person could be held in pre-trial detention for 12 months; what became of the principle of proportionality in that Act? The Special Powers Act authorized the arrest without a warrant of anyone who had committed an offence covered by that Act or who might reasonably be assumed to have committed, or to have been on the point of committing, such an offence. That Act also authorized unlimited use of firearms. According to the explanations which had been given, there were regulations governing the use of weapons; he would like to know whether those regulations had the rank of law and whether they called for penalties in cases of infraction. He asked whether there were special regulations governing the use of weapons against crowds, since such use could have terrible consequences. Human beings were very easily tempted to use whatever power they were given and he thought the Indian authorities gave individuals too much power without adequate safeguards. He asked the delegation to reply on that point.

17. Mrs. EVATT said that while the Indian delegation had provided a great deal of interesting information, there were still major gaps in the

Committee's understanding of the situation and that certain problems were, perhaps, more serious than was suggested by the delegation's statements. Furthermore, the existing legislation, some but not all of which was excellent, was not being fully implemented; in that regard, the problem noted during the Committee's consideration of the previous report in 1991 remained.

18. The Committee had been informed that the Armed Forces (Special Powers) Act was being challenged before the Supreme Court with the support of the National Human Rights Commission. She asked who had initiated that procedure, what provisions of the law were being challenged, when the appeal would be considered and when the Supreme Court would take a decision. She realized that the Terrorist and Disruptive Practices (Prevention) Act (TADA) had lapsed, but other laws, particularly the Armed Forces (Special Powers) Act, were still being implemented in the so-called "disturbed areas". She did not quite understand what areas were affected in particular, and for how long, since it seemed that special powers were permanently in force in certain States, including Punjab, Jammu and Kashmir, Tamil Nadu and Manipur.

19. She requested information on the status of the bill to amend the Code of Criminal Procedure so as to make a judicial inquiry mandatory in cases of death, disappearance or rape in police custody. It was clear from the available information that there were far fewer investigations of torture cases than there were complaints and reported incidents. Respect for the right to life made it essential for any death in custody to be fully investigated by an independent body. She asked whether any action had been taken on the proposal to establish a central prison register for individuals who were arrested and detained under the special legislation.

20. Cases of persons being raped while in police custody were not infrequent, and she asked what special legislative or other measures were being taken to combat that practice and whether approval for prosecution of those responsible was readily obtained. It would be useful to have separate statistics on rapes in police custody since the data provided by the National Human Rights Commission did not distinguish between those and other instances of rape.

21. In the list of issues (CCPR/59/Q/IND/3), the Committee had asked whether there had been any measurable progress with regard to the situation of the scheduled castes and tribes. The statistics mentioned by the delegation did indeed show progress, but that process was very slow. The statistics on literacy and education made no distinction between the rates applicable to men and women. It was her impression that the literacy rate among women was very low. In her opinion, the insufficient progress observed in the areas of education, standard of living and participation in public affairs was a direct consequence of the problems faced by the most vulnerable groups of Indian society, including discrimination, gender inequality and bonded and child labour.

22. She agreed with Mrs. Medina Quiroga's statements concerning the personal laws. The delegation had stated that the Government did not interfere in those laws unless specifically requested to do so by a minority community. However, for years the Christians in India had been requesting changes in discriminatory provisions in the law governing the grounds for applying for

divorce, and a bill aimed at restoring equality in that regard had been in existence since 1994. What was the status of that bill? Paragraph 73 of the report stated that, according to State Governments, a total of 256,000 bonded labourers had been identified and freed. However, according to a report prepared at the Supreme Court's request, there were 1 million bonded labourers in the State of Tamil Nadu alone. Most of those labourers were children belonging to the scheduled castes and tribes; furthermore, there were few prosecutions and virtually no convictions in such cases. The vigilance committees mentioned in the report (para. 72) were non-existent, non-functional, ineffective or corrupt.

23. Debt bondage was in fundamental contradiction with the spirit of the Indian Constitution. It might be asked whether, in the case of a problem of that type, it was sufficient to leave the States the responsibility for taking appropriate measures, since the results had thus far been unsatisfactory. She asked whether the Indian Government had considered setting up a specialized national agency which might be capable of dealing with that problem more effectively. Child labour was also a matter of great concern. The statistics provided by NGOs were alarming: millions of children were reportedly receiving no education whatever since they were obliged to work in order to earn a mere pittance. The National Human Rights Committee had noted in its report that it was highly unlikely that the goal of eliminating child labour, or even the hazardous occupations which affected 2 million children, would be achieved.

24. The entire question of children's right to education was therefore at issue, and she wondered what action was being taken on the National Human Rights Commission's recommendations and the Supreme Court decisions concerning free and compulsory education for all children until the age of 14. The National Human Rights Commission had criticised gaps in the child labour legislation (prohibition and regulation), and she wondered whether that legislation had been amended and how hazardous work was defined. Was it true that some companies which employed children at hazardous jobs were State-subsidized? She asked whether the Government, in order to measure the precise extent of the child labour problem, had taken steps to ensure compulsory registration of births. Lastly, she said that child prostitution was particularly disturbing and asked what India was doing to help young girls who were sold into houses of prostitution, many of whom contracted AIDS (acquired immunodeficiency syndrome) and were the victims of negligence and violence. Returning them to their homes did not constitute adequate assistance.

25. Mr. YALDEN said he agreed with the Committee member who had stressed that there was no lack of legislation or institutions in India and that they were well described in the report, but that it was nevertheless difficult to gain an idea of the real situation and, in particular, of the actual effect of that legislation and those institutions. The probity of the National Human Rights Commission was certainly not in doubt, but it was unfortunate that complaints concerning the military - which, moreover, had to be understood in a very broad sense since the term covered all types of paramilitary organizations - lay outside its jurisdiction. Furthermore, the regulation which imposed a one-year limit for consideration of a complaint limited the Commission's room for manoeuvre, although it could easily be dispensed from

compliance with that restriction. It was impressive that 4,000 complaints per month were being received, but he wondered whether the Commission had enough staff and whether the Government planned to increase it.

26. He thanked the delegation for the information it had provided concerning the scheduled castes and tribes (CCPR/C/76/Add.6, para. 16); however, that information did not sufficiently clarify the responsibilities of the National Commission for Scheduled Castes and Tribes. The Committee needed more information concerning measures which India could take, on had in fact taken, to combat clear discrimination against those castes and tribes, which continued to be subjected to numerous atrocities. The statistics on the number of civil service officials who belonged to the scheduled castes and tribes did not show what percentage of them occupied high-level posts. Although the literacy rate among the scheduled castes and tribes was rising, it remained very low - only half that of the rest of the population - and he wondered whether there were plans to take additional measures to improve that situation.

27. He said he would not return to the question of bonded labour, although he agreed with the other Committee members that it was an extremely serious problem. With regard to the situation of women, he requested more detailed information on the actual functioning of the National Commission for Women and on the number of posts occupied by women in public departments. The question of the personal laws also remained disturbing, and since it had been stated that a study of 39 laws had been undertaken with a view to identifying discriminatory provisions, he asked which laws those were and what measures were planned.

28. Lastly, the most disturbing problem in India was that of child labour, and the National Human Rights Commission's position on that issue was very clear. Work had a direct and serious impact on the level of children's education, and the Commission had stated that, despite constitutional provisions instituting compulsory education until the age of 14, there had been no real progress in that regard, and that the current number of illiterate persons in India was currently greater than the entire population at the time of independence. That showed how important it was to know what specific steps the Government planned to take in order to eliminate child labour, to ensure that children received an education and, by the year 2000, to eliminate the employment of children in hazardous occupations.

29. Mr. POCAR said that India's third periodic report, which had been submitted three years late, showed encouraging progress in several areas. He would focus on implementation of the anti-terrorist legislation. During the Committee's consideration of the previous report, it had pointed out that several provisions of the Armed Forces (Special Powers) Act, the National Security (Amendment) Act and the Terrorist and Disruptive Practices (Prevention) Act (TADA) were incompatible with articles 6, 9 and 14 of the Covenant.

30. The fact that the Terrorist and Disruptive Practices (Prevention) Act (TADA) had expired (para. 51 of the report) and that the Armed Forces (Special Powers) Act was being amended showed that measures had been taken. However,

nothing had been said about the National Security (Amendment) Act, which was of general scope and remained contrary to the Covenant, particularly with regard to its authorization of pre-trial detention.

31. A five-day period for informing detainees of the grounds for their detention and a three-week period for bringing them before the Advisory Board were incompatible with article 9, paragraphs 2 and 3, of the Covenant. Furthermore, it was highly unlikely that the Advisory Board could be considered as "a judge or other officer authorized by law to exercise judicial power" within the meaning of article 9 of the Covenant. Those Boards had seven weeks in which to decide on the legality or arbitrariness of placement in pre-trial detention. He asked what criteria were used in determining whether or not a pre-trial detention order was arbitrary, since it appeared that the Advisory Boards were authorized only to ensure that the grounds given by the authority which had ordered the detention - in other words, the relevant branch of the Executive - were lawful. The Advisory Board was not authorized to consider the basic question of whether those grounds were sufficient to justify arrest, a fact which gave the Executive excessively broad discretionary powers and consequently provided an opportunity for arbitrariness. Furthermore, pre-trial detention orders could not be appealed against and even where it was established that the order had been arbitrary, the victim could not claim compensation. Pre-trial detention could be authorized under article 4 of the Covenant in time of public emergency which threatened the life of the nation, and it was disturbing that in India it was authorized under an Act with general application. He hoped that the delegation would be able to provide further information on the matter.

32. Mr. SCHEININ said he shared the concerns raised by other members of the Committee with regard to the use of firearms, extrajudicial execution, disappearance and torture. He welcomed the Indian delegation's statement that the Government intended to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and asked whether it planned to do so soon. Did the Indian Government intend to recognize the competence of the committees envisioned in the Convention against Torture and the Optional Protocol to the Covenant to receive complaints from individuals? With regard to the monitoring procedures established by the United Nations, he asked why the Special Rapporteur on questions relating to torture had not been permitted to visit India. He was also concerned by the actions of paramilitary groups, which committed numerous atrocities, and asked to what extent the State was responsible for those operations.

33. With regard to violence against women, he had listened with interest to the statistics on prosecutions for foeticide and infanticide but had been unable to gain an idea of the real extent of the problem with respect to female foetuses and infants. The National Human Rights Commission had provided demographic statistics on the proportion of men and women in the population, which showed that, between 1901 and 1991, there had been a clear reversal of proportions and that males were currently in the majority. It would be useful to have the most recent statistics in order to determine whether the situation had worsened or improved somewhat since the prosecution of infanticide. Lastly, with regard to the system of castes and tribes, which was a basic source of inequality, he requested fuller information on the functioning of the National Commission for Scheduled Castes and Tribes and, in

particular, asked whether Parliament had already considered the report of that Commission and whether the funds set aside for activities to benefit the castes and tribes were regularly used for that purpose.

34. Mr. PRADO VALLEJO said he shared the concerns expressed by the other members of the Committee. He noted that the Government of the Republic of India had entered reservations to articles 9, 15, 12, 19 (3), 21 and 22 of the Covenant and asked if it planned to withdraw them. The Committee had had occasion to emphasize in its General Comment 24 that it was not possible to make a reservation incompatible with the object and purpose of the treaty. The reservations entered by the Government of India were precisely of that nature and should be withdrawn.

35. He was also concerned at the excessive use of force by the police, which had over-extensive powers, considering that it was authorized to shoot to kill during disturbances. United Nations regulations in that regard stipulated that firearms should be used only as a last resort, and it was important for the Indian police forces to be familiar with those regulations. The Committee had been informed that cases involving the disappearance or death of individuals held in police custody were not investigated; he very much hoped that that was not so. Furthermore, article 4 of the Covenant, which dealt with the proclamation of states of emergency, was not respected in India.

36. Lastly, he asked for an assurance that a genuine effort was being made to eliminate the continuing discrimination against members of the scheduled castes and tribes.

37. Mrs. GAITAN DE POMBO said that the report of India (CCPR/C/76/Add.6) reflected a multi-ethnic, multicultural and complex society which, like many others, was facing development problems. However, those problems could not excuse a disregard for civil and political rights. On the other hand, she realized that the coexistence of various underprivileged minorities, castes and tribes posed a threat not only to democratic institutions, but also to the national unity of India.

38. With regard to the oral presentation by the Indian delegation, she welcomed the current democratic policy of decentralization but wondered how much autonomy the local authorities had. What specific measures had been taken to ensure that the scheduled castes and tribes had access to political decision-making bodies on an equal footing? Those issues had a direct impact on the effective implementation of articles 2, 18, 19, 24, 25, 26 and 27 of the Covenant.

39. It was her understanding that the National Commission for Minorities and the National Commission for Scheduled Castes and Tribes had only consultative status, which was disturbing. Of course, they submitted reports to Parliament, but she wondered how the handling of complaints of human rights violations was monitored and whether, in such cases, the recommendations of the two Commissions were binding. It appeared that allegations of human rights violations were not necessarily investigated. She also wondered to what extent the National Human Rights Commission was independent, particularly with regard to the exercise of its right to visit prisons and other places of detention. That question was all the more important since, according to NGOs,

torture and inhuman or degrading treatment continued to be practised on a regular basis, using abominable techniques. She asked the Indian delegation to provide details on all those matters.

40. With regard to the international human rights bodies, she welcomed the fact that the Indian Government had allowed the United Nations High Commissioner for Human Rights to visit the country and had issued a similar invitation to the Special Rapporteur on the question of religious intolerance. However, like Mr. Scheinin, she wondered why the Special Rapporteur on the question of torture had not been permitted to visit India.

41. Lastly, she shared the concern expressed by other members of the Committee with regard to compulsory child labour, which was both quantitatively and qualitatively extensive. Children were the richest heritage of any society, and such a situation was clearly opposed to the development ideals of Indian society.

42. Mr. BUERGENTHAL said that since he had received his copy of the report (CCPR/C/76/Add.6) only very late, he would restrict his questions to a few issues. Firstly, did the National Human Rights Commission have access to military bases and prisons? That question was particularly important since disappeared persons were often held in such establishments in States whose legislation granted special powers to the army. If not the Commission, who did have access to them? Like other members of the Committee, he wondered whether the Indian authorities planned to authorize the Commission to handle cases concerning the military.

43. On reading the 1995/1996 annual report of the National Human Rights Commission, he had noted that in its previous report, the Commission had expressed concern regarding conditions in prisons and detention centres in Jammu and Kashmir. Subsequent activity by the International Committee of the Red Cross (ICRC) in that State had reportedly allayed much of the Commission's concern. Did that mean that the Indian authorities had delegated to the ICRC a task for which they themselves were responsible and which they were empowered to handle far more effectively than any outside agency?

44. Generally speaking, he admired India's progress in the field of human rights; however, in the interests of transparency and in view of the numerous NGO reports of human rights violations, he would like to ask a few questions. For example, Human Rights Watch had stated that India remained one of the most dangerous places in the world for human rights activists. According to that organization, two such activists had recently been killed, and there had apparently been no investigation into their death.

45. According to Amnesty International, the fact that the Armed Forces (Special Powers) Act had been in force in the State of Manipur for 40 years showed that the authorities condoned extrajudicial execution. The Special Rapporteur on extrajudicial, summary or arbitrary executions had recently stated that respect for the right to life in Jammu and Kashmir remained a source of concern and had invited the Indian Government to take measures to ensure that the security forces and paramilitary groups acted in accordance with international law, human rights standards and international humanitarian law. Furthermore, it appeared that a challenge to the constitutionality of

the Armed Forces (Special Powers) Act had been pending before the Supreme Court since 1992. He asked why the Court had not yet taken a decision on the matter.

46. Mr. LALLAH said that the third periodic report of India (CCPR/C/76/Add.6) was far better than the previous one (CCPR/C/37/Add.13), which had essentially listed the legal and constitutional provisions favourable to the protection of human rights, without any mention of the factors and difficulties affecting the implementation of the Covenant. The current report was much more detailed and had been usefully supplemented by the Indian delegation. Nevertheless, the Committee might be justified in thinking that its consideration of the previous reports of India (CCPR/C/10/Add.8 and CCPR/C/37/Add.13) had produced some effect, since the TADA, which had been heavily criticized by the Committee, had been allowed to lapse and several commissions related to human rights had been established, which was encouraging. However, a number of sources of concern remained. In particular, the Armed Forces (Special Powers) Act authorized military authorities to take measures, which in fact derogated from the rights referred to in the Covenant. Of course, that instrument did authorize certain derogations, but only within strict limits, as set out in article 4 thereof.

47. Generally speaking, his primary concern was the situation with regard to the rights set forth in articles 1, 4 and 25 of the Covenant. While it was true that the Indian authorities were faced with uprisings and secessionist movements, some of which might receive support from outside the country, that abnormal situation had continued for such a long time that the Government should ask whether the solution should not be a political rather than a military one. In that regard, he noted that the National Human Rights Commission had recommended that human rights violations should cease or, at least, should be avoided as far as possible in areas of unrest or terrorism, and had encouraged the security forces to cooperate with the civilian authorities in those regions. The Commission had also emphasized the need to seek solutions through the adoption of appropriate political measures, which were the best way of removing the causes of violence in those areas. Generally speaking, it had recommended an essentially political approach to the problems of regions exposed to terrorism and armed insurrection. He had information which indicated that a number of people in the north-east of the country did not consider themselves to be Indians, and the fact that the Commission's reports often mentioned "North-Eastern States" without naming them doubtless aggravated that sense of difference. It was particularly important to take political measures in areas of simmering unrest, particularly among the young people, in order to offer them sufficient space and thereby avert attempts to break up the Union.

48. He asked whether judicial proceedings were accompanied by all the human rights guarantees and whether the principle of the presumption of innocence was fully respected.

49. Like other members of the Committee, he wondered whether the federal policy of non-interference in the personal laws of certain communities was compatible with the obligation under the Covenant to ensure equality between men and women. He gave as an example his own country, Mauritius, which also had a multicultural society and where, from time to time, movements demanded

the implementation of certain personal laws. Moreover, the example of India had been cited as a model in the Mauritian Supreme Court. The Court had considered that example carefully but had decided that the Indian authorities' policy was probably a consequence of the existence of very ancient traditions in that country.

50. Lastly, he noted from paragraph 115 of the report (CCPR/C/76/Add.6) that there had been a number of improvements in the dowry system. The question of dowry-related debt had greatly concerned the Committee during its examination of the previous periodic reports, and the provisions which had subsequently been adopted were therefore welcome. However, it would be useful to see their effect in practice.

51. The CHAIRMAN invited the Indian delegation to reply to the additional questions raised orally by members of the Committee under part I of the list of issues (CCPR/C/59/Q/IND/3) and said she took it that the delegation would like a few minutes in which to organize its replies.

The meeting was suspended at 5 p.m. and resumed at 5.20 p.m.

52. Mr. DESAI (India), replying to questions asked by members of the Committee under part I of the list of issues (CCPR/C/59/Q/IND/3), said that the 1958 Armed Forces (Special Powers) Act and the National Security (Amendment) Act were in no way contrary to the provisions of the Covenant and were implemented in accordance with the provisions of the Indian Constitution, which called for a separation of powers between the Federal Government and the seven States of the Union in legislative and executive matters. Thus, they did not constitute emergency legislation. According to the Constitution, all matters associated with the maintenance of public order were the exclusive province of the States, and the Union's armed forces could intervene in the affairs of a State only at the latter's request or under exceptional circumstances. Normally, the individual State police departments exercised the powers generally conferred on any national police and could resort to reasonable force, for example, in order to disperse unauthorized crowds or to protect property and people during incidents which threatened public order, without violating any rights whatever. Furthermore, if required by the situation, the civilian police could legally request the armed forces of the State in question to assist in restoring public order. In that regard, he noted that during the recent incidents in Bombay, shots had been fired, not by the armed forces of the Union, but by the local police and after due warning. Of course, that incident was regrettable, but no society, even a highly civilized one, was proof against such situations. Furthermore, the situation in Punjab had returned to normal and emergency measures were no longer required in that State.

53. He explained that since 1986, only two districts had been declared "disturbed areas" and that such areas were placed under the control of the army of the State in which they were located until order was restored. Any State declaring the existence of a "disturbed area" must so inform the Federal Government, which intervened only in extreme cases where the authorities of a State themselves acted illegally. The special powers conferred on the armed

forces in such situations were exercised only within the strict limits necessary to the maintenance of public order, and the use of force was limited to cases of absolute necessity.

54. With regard to arrests without a warrant, article 41 of the Code of Criminal Procedure did, in fact, authorize public security officers to arrest without a warrant anyone caught in the act of committing a criminal offence, and even anyone who might reasonably be supposed to have committed such an offence; he did not consider that to be an unusual provision, since it appeared in the legislation of most of the world's countries. Furthermore, in India, any person could lodge a complaint against another person either directly with the police or in the courts. However, when an individual lodged a complaint against a judge or State official for an offence committed in the exercise of the powers conferred by law, proceedings could not be initiated without government authorization, which was normally given by the highest authorities of the service in which the person in question was employed.

55. The Indian Code of Criminal Procedure did indeed authorize pre-trial detention for up to three months, a period that could be extended only on the recommendation of an Advisory Board composed of current or former High Court judges. However, pre-trial detention orders were not part of judicial procedure as such, which meant that the rights set forth in the Covenant did not necessarily apply during that form of detention. He also noted that India had entered the following reservation upon accession to the Covenant: "With reference to article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India takes the position that the provisions of the article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India. Further, under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State" (CCPR/C/2/Rev.4, p. 24 Eng.).

56. The CHAIRMAN thanked Mr. Desai for his explanations and said she hoped that the Indian delegation would complete its replies to the questions under part I of the list of issues at the next meeting.

The meeting rose at 6.05 p.m.